



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,849	10/16/2007	Gunther Leising	U 016328-0	4589
140	7590	06/16/2009		
LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023			EXAMINER TAVLYKAEV, ROBERT FUATOVICH	
			ART UNIT 2883	PAPER NUMBER
			MAIL DATE 06/16/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/581,849

Applicant(s)

LEISING ET AL.

Examiner

ROBERT TAVLYKAEV

Art Unit

2883

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Robert Tavlykaev/
Patent Examiner, Art Unit 2883

/Frank G Font/
Supervisory Patent Examiner, Art Unit 2883

Continuation of 11, does NOT place the application in condition for allowance because: The Applicant repeats (pages 12 - 14 of Remarks) the same incorrect interpretation of the teachings of Iwaki, the correct interpretation having already been provided in the Office Actions of 7/29/08 and 2/19/09. In a nutshell, Iwaki teaches at least two alternative techniques of forming the core layer (105). The first technique employs deposition of films representing a core layer and one or more cladding layers. The second technique is alternative to the first and employs UV writing in order to form a volume (core) with an increased refractive index and hence create conditions for waveguiding. The core is formed by UV exposure in a cladding layer having a refractive index that is lower than that of the core after the core was UV written. The UV writing technique is alternative, not optional or in addition to the first technique as the Applicant states. The Applicant alleges (page 13, 3rd par.) that UV radiation is used to increase the refractive index of an already formed core layer. However, there is no need to expose a core formed by the first technique to UV thereby increasing its index -- it would already be higher than that of the cladding and that is sufficient for waveguiding. The Applicant refers to par. [0069] as allegedly supporting the Applicant's interpretation. However, if nothing else, par. [0069] proves the opposite to the Applicant's statement. In particular, the beginning of par. [0069] cites a "film form optical waveguide film" that can be used for the entire layer (104). The end of par. [0069] cites the alternative technique of UV writing and states that a "an ultra-violet irradiation curing optical waveguide film", which unambiguously refers to the layer (104), the latter being exposed to UV to form an area/volume/core with an increased refractive index, as required for waveguiding.

The Applicant also argues (page 15, 3rd par.) that Cumpston requires unexposed portions of the material to be washed away in order to obtain a 3D structure and refers to Fig. 3c. The Examiner respectfully disagrees. Fig. 3c and text related to 3DLM are only part of what is described by Cumpston, as evident from the publication itself, including the 1st sentence of 2nd par. on page 53 (the word "also" is specifically noted). 3DLM is an example of applying two-photon-initiated polymerization (TPIP) in order to form 3D objects that can be surrounded by air. However, in the preceding sentence (last sentence of 1st par. on page 53), Cumpston states that TPIP causes the refractive index of the exposed area to increase and that is exactly what is required for waveguiding, in particular, for creating a core layer disclosed by Iwaki. Dissolution of the unexposed material is not required to form a 3D area of a higher refractive index.

As a final relevant comment, the Examiner notes that the Applicant emphasizes some features (e.g., a gradient index vs step index, wet etching vs 3D structuring, etc.) of the instant application and alleges that the prior art could not have those, with which the Examiner respectfully disagrees. But even if the Applicant's statement were taken, arguendo, as true, the alleged unique features are not even recited by the claims. The Examiner notes that although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed Cir. 1993).